SUBJECT INDEX

	Page
Opinions below	2
Jurisdiction	2
Questions presented	4
Statement of the case	5
Argument	9
I.	
The Goldmans failed to raise or preserve before the California courts questions one through five set forth in their statement of jurisdiction	9
II.	
The questions set forth in the Goldmans' statement of jurisdiction are not substantial	11
A. No important questions of federal law are raised by the Goldmans	11
B. The contentions of the Goldmans relating to tax allocation are clearly erroneous	12
1. Article XIII, §19 and California Health and Safety Code §§ 33950-33954 do not violate the Fourteenth Amendment to the United States Constitution	12
2. Article XIII, §19 of the California Constitution and California Health and Safety Code §§ 33950-33954 do not violate Article I, §10 of the United States Constitution	16
3. The contentions of the Goldmans respecting 42 U.S.C. §1460 are totally baseless	18

Page

4. The Goldmans' contention that the final plan discriminates between owner-participants and redevelopers in respect of the costs of public site improvements in violation of the equal protection clause to the Fourteenth Amendment to the United States Constitution is without basis 22

Conclusion 23

INDEX TO APPENDICES

Appendix "A." Contentions of the Goldmans as raised in the California Trial Court and Appellate Courts and in their statement of jurisdiction.

Appendix "B." Excerpt from the agency's brief below, relating to 42 U.S.C.A. Section 1460.

Appendix "C." Excerpt from the agency's brief below, relating to alleged discrimination between owner-participants and redevelopers.

TABLE OF AUTHORITIES CITED

Cases	Page
Ainsworth v. Bryant, 34 Cal. 2d 465, 211 P. 2d 564	17
Alabama Power Co. v. Ickes, 302 U. S. 464	21
Andrews v. City of Los Angeles, 175 Cal. App. 2d 459, 346 P. 2d 457	17
Bailey v. Anderson, 326 U. S. 203	10
Baird v. Hodson, 161 Cal. App. 2d 687, 327 P. 2d 215	9
Bowe v. Scott, 233 U. S. 658	11
C. I. O. v. McAdory, 325 U. S. 472	10
Gart v. Cole, 263 F. 2d 244, cert. den. 359 U. S. 978	21
Cedars of Lebanon Hospital v. Los Angeles County, 35 Cal. 2d 729, 221 P. 2d 31	17, 18
Chicago, Ind. & L. R. Co. v. McGuire, 196 U. S. 128	3
City of Glendale v. Trondsen, 48 Cal. 2d 93, 308 P. 2d 1	17
Community Redevolpment Agency v. Goldman, 33 Cal. Rptr. 92	2
County of Mariposa v. Merced Irr. Dist., 32 Cal. 2d 467, 196 P. 2d 920	15
County of Tulare v. City of Dinuba, 188 Cal. 664, 206 Pac. 983	18
Covington v. Kentucky, 173 U. S. 231	18
Dewey v. Des Moines, 173 U. S. 193	10
Dodge v. The Prudential Ins. Co. of America, 343 Mass. 375, 179 N. E. 2d 234	15

Page

Drake v. City of Los Angeles, 38 Cal. 2d 872, 243 P. 2d 525 17

Everly Enterprises, Inc. v. Altman, 54 Cal. 2d 761, 8 Cal. Rptr. 455 9

Frothingham v. Mellon, 262 U. S. 447 21

Harding v. Illinois, 196 U. S. 78 11

Harrison-Halstead Com. Group, Inc. v. H.H.F.A., 310 F. 2d 99 21

Hershey v. Reclamation District No. 108, 200 Cal. 550, 254 Pac. 542 9

Housing Authority v. City of Los Angeles, 38 Cal. 2d 853, 243 P. 2d 515 17

Hulbert v. Chicago, 202 U. S. 275 ..... 3, 10

Hunter v. City of New York, 121 N. Y. S. 2d 841 22

Jenner v. City Council, 164 Cal. App. 2d 490, 331 P. 2d 176 9

Kaskel v. Impellitteri, 121 N. Y. S. 2d 848, aff'd 115 N. E. 2d 659 21

Land Clearance Auth. v. St. Louis, 27 S. W. 2d 58 .. 15

Mallon v. City of Lnng Beach, 44 Cal. 2d 199, 282 P. 2d 481 15

Mayne v. San Diego Elec. Ry. Co., 179 Cal. 173, 175 Pac. 690 10

Miller v. Cornwall R.R. Co., 168 U. S. 131 11

Murray v. La Guardia, 291 N. Y. 320, 52 N. E. 2d 884 cert. den. 321 U. S. 771 15

Mutual Life Ins. Co. v. McGrew, 188 U. S. 291 ..... 3, 10

Page

Pittsburgh Hotels Ass'n, Inc. v. Urban Redevelopment Auth., 202 F. Supp. 486, aff'd 309 F. 2d 186 21

Radio Station WOW, Inc. v. Johnson, 326 U. S. 120 3

Redevelopment Plan For Bunker Hill, In re, 61 Adv. Cal. 1, 37 Cal. Rptr. 74 ..... 2, 8, 22

Redfern v. Board of Comrs. of Jersey City, 137 N. J. L. 356, 59 A. 2d 641 15

Roberts v. Krafts, 141 Cal. 20, 74 Pac. 281 10

Souza v. Joseph, 22 Cal. App. 179, 133 Pac. 981 10

Tennessee Electric Co. v. Tennessee Valley Authority, 306 U. S. 118 22

Thomas v. Iowa, 209 U. S. 258 11

West Coast Advertising Co. v. San Francisco, 14 Cal. 2d 516, 95 P. 2d 138 17

Wheeling v. Financial Indemnity Co., 201 Cal. App. 2d 36, 19 Cal. Rptr. 879 10

Williams v. Baltimore, 289 U. S. 36 14

Miscellaneous

House Report No. 913, June 25, 1955, 84th Cong., 1st Sess. 20

House Report No. 2363, June 15, 1956, 84th Cong., 2nd Sess 20

Senate Report No. 84, Feb. 25, 1949, 81st Cong., 1st Sess 19

Senate Report No. 281, 87th Cong., 1st Sess. 20

Senate Report No. 924, September 8, 1959, 86th Cong., 1st Sess. 20

Page

Senate Report 924, September 28, 1959, 86th Cong., 1st Sess. 20

Senate Report No. 1472, May 28, 1954, 83rd Cong., 2nd Sess. 19

Rules

Rules of the Judicial Council, Rule 8.8 9

Rules of the Judicial Council, Rule 216 9

Statutes

Act of July 15, 1949, ch. 388, Title I, §110, 63 Stat. 420 19

Act of August 2, 1954, ch. 649, Title III, §311, 68 Stat. 626 19

Act of August 11, 1955, ch. 783, Title I, §106(c), 69 Stat. 637 20

Act of August 7, 1956, ch. 1029, Title III, §302(b)-(1), 70 Stat. 1097 20

Act of September 23, 1959, P.L. 86-372, Title IV, §413, 73 Stat. 675, 677 20

Act of June 30, 1961, P.L. 87-60, Title III, §308, 75 Stat. 166, 168, 172 20

California Constitution, Article XIII, Sec. 19 ..... 2, 4, 6, 7, 8, 9, 10, 12, 13, 17, 18

California Health and Safety Code, Secs. 33950-33954 ..... 2, 6, 7, 8, 10, 12, 13, 17, 18

City of Los Angeles Charter, Sec. 2 16

Statutes of 1925, Res. ch. 25, p. 1028 17

Los Angeles City Ordinance No. 113,231 ..... 4, 5, 6

United States Code, Title 28, Sec. 1257 3

Page

United States Code Annotated, Title 42, Sec. 1460 ..... 2, 3, 4, 6, 7, 8, 10, 11, 18

United States Code Annotated, Title 42, Sec. 1460(c) 18, 19, 20, 21

United States Code, Congressional and Administrative News (1954), p. 2841 20

United States Code, Congressional and Administrative News (1959), p. 2864 20

United States Constitution, Article I, Sec. 10 ..... 2, 4, 6, 7, 8, 10, 12, 16, 18

United States Constitution, Fourteenth Amendment 2, 4, 6, 7, 8, 9, 10, 12, 18

Textbook

3 California Jurisprudence 2d, Sec. 140 9

IN THE

Supreme Court of the United States

October Term, 1964

Case No. 416

HENRY GOLDMAN and MAY GOLDMAN,

Appellants,

vs.

THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF LOS ANGELES, CALIFORNIA,

Appellee.

On Appeal From the Supreme Court of the State of California.

MOTION TO DISMISS OR AFFIRM.

Appellee in the above-entitled case moves to dismiss and/or affirm on the following grounds:

1. Only one of the purported federal questions set forth in appellants' (the Goldmans) Statement of Jurisdiction (as supplemented) was even arguably seasonably raised and preserved before the California courts; and

2. None of the purported federal questions set forth in the Goldman's Statement of Jurisdiction are substantial, and there is no need for plenary review thereof.

Opinions Below.

The opinion of the California Supreme Court is reported as *In re Redevelopment Plan For Bunker Hill*, 61 Adv. Cal. 1, 37 Cal. Rptr. 74 (1964). The opinion of the California District Court of Appeal is reported as *Community Redevelopment Agency v. Goldman*, 33 Cal. Rptr. 92 (1963). Said opinions are also printed as appendices to the Goldmans' Statement of Jurisdiction.

Jurisdiction.

There is a clear defect of jurisdiction with respect to the first five questions set forth in the Goldmans' Statement of Jurisdiction in that:

1. The Goldmans failed to draw into question before the California courts the validity of Article XIII, §19 of the California Constitution under the Fourteenth Amendment to the United States Constitution;

2. The Goldmans failed to preserve their contention that California Health and Safety Code §§33950-33954 violated the due process clause of the Fourteenth Amendment to the United States Constitution by failing to assert that contention in their brief in the California appellate courts;

3. The Goldmans failed to preserve their contention that Article XIII, §19 of the California Constitution and California Health and Safety Code §§ 33950-33954 violated Article I, §10 of the United States Constitution by failing to assert that contention in their brief in the California appellate courts; and

4. The Goldmans failed to assert before any California court that either the actions of appellee (the "Agency") or the Council of the City of Los Angeles (the "City Council") with respect to 42 U.S.C.A.

§1460, or the interpretation by the trial court of said section and the rights of the Goldmans thereunder were or would be in any way violative of any rights of the Goldmans under the United States Constitution (except to the extent raised in the Goldman Petition for Rehearing below, at p. 2); and

5. None of the purported federal questions set forth in the Goldmans' Statement of Jurisdiction are substantial.

The only question set forth in the Goldmans' Statement of Jurisdiction which arguably was raised in the trial court and preserved before the California appellate courts is that set forth as numbered paragraphs 6 on page 4 thereof. That issue related to the relative position of owner-participants and redevelopers with respect to the cost of public site improvements inferentially buried in the welter of contentions made by the Goldmans relating to this general area.

The contentions raised by the Goldmans at the various stages of this proceeding have been so varied and have changed so much that those here relevant are set forth side by side in Appendix "A" hereto in the forms taken by each thereof before the trial court, the California appellate courts and in the Statement of Jurisdiction herein, so that relatively easy visual comparison can be made.

The prerequisites to jurisdiction of 28 U.S.C. §1257 have not been met by the Goldmans as to the first five questions set forth in their Statement of Jurisdiction [*Chicago, Ind. & L. R. Co. v. McGuire,* 196 U. S. 128, 131-133 *Radio Station WOW, Inc. v. Johnson,* 326 U. S. 120, 128; *Mutual Life Ins. Co. v. McGrew,* 188 U. S. 291, 307-308, 310-311; *Hulbert v. Chicago,* 202 U. S. 275, 280-281].

Questions Presented.

1. Is jurisdiction present with respect to the questions set forth in the Goldmans' Statement of Jurisdiction especially questions one through five?

2. Assuming jurisdiction, may the people of California, by an amendment to the California Constitution (Article XIII, §19), provide for the use of the tax revenue derived from the increased assessed valuation in a redevelopment project area, brought about by the redevelopment thereof, to finance that redevelopment in whole or part?

3. Assuming jurisdiction, is the charter of the City of Los Angeles (the "City") a contract within the scope of Article I, §10 of the United States Constitution?

4. Assuming jurisdiction, does 42 U.S.C.A. §1460 permit the loan or grant of federal funds to redevelopment projects which provide for the redevelopment of a predominantly residential area for predominantly non-residential uses?

a. Assuming it does not, may taxpayers sue to enjoin the expenditure of such federal funds on the grounds that the project does not meet the standards of eligibility in said section?

b. Assuming taxpayer standing, does a state court have jurisdiction to adjudicate with respect to the action of the federal administrator in making such funds available?

5. Assuming jurisdiction, is Los Angeles City Ordinance No. 113,231 invalid under the equal protection clause of the Fourteenth Amendment for adopting

a redevelopment plan with related owner participation rules which provide:

(i) that owner-participants (landowners in the project area who agree to retain their land and redevelop it in accordance with the redevelopment plan) must assume liability for their pro rata share of the cost of public site improvements (utilities, sewers, sidewalks, etc.) to the extent such improvements are a net benefit to their property as reflected in the re-use value thereof; and

(ii) redevelopers (those who purchase property from the Agency after the clearance of the area and the installation of new public site improvements) are required to pay the fair market value for the property they purchase, which necessarily reflects the value of the site improvements?

Statement of the Case.

On March 31, 1959 the City Council adopted Ordinance No. 113,231 which approved and adopted The Redevelopment Plan For The Bunker Hill Urban Renewal Project 1B (the "Final Plan"). Thereafter, on May 25, 1959, the Goldmans filed a complaint, and later an amended complaint, for a declaratory judgment and injunction [C. T. 154].

On April 11, 1960, the Goldmans' action was ordered consolidated for purposes of trial with five other actions, including a special proceeding brought by the Agency.

In the Joint Pre-Trial Statement, and Amendment thereto, of the Goldmans and the Agency, which set forth the legal issues to be tried between them, and the

Goldmans' contentions with respect to those issues [C. T. pp. 548-573, 574-580], the Goldmans

(i) failed to contend that Article XIII, §19 of the California Constitution violated the Fourteenth Amendment to the United States Constitution [C. T. pp. 575-576, 579; see Appendix "A"];

(ii) failed to assert any contention that any action under or interpretation of 42 U.S.C.A. §1460 was or would be violative of the Fourteenth Amendment and the United States Constitution [C. T. pp. 562, 578; see Appendix "A"]:

In such Joint Pre-Trial Statement, the Goldmans did contend

(a) that California Health and Safety Code §§33950-33954 and Final Plan Section C.8.d.(1) and (2) violated the Fourteenth Amendment to the United States Constitution [C. T. pp. 575, 576; see Appendix "A"];

(b) that Article XIII, §19, California Health and Safety Code §§ 33950-33954 and Ordinance No. 113,231 violated Article I, §10 of the United States Constitution by allegedly interfering with the Los Angeles City Charter [C. T. pp. 576, 579; see Appendix "A"];

(c) that the Final Plan did not qualify for federal financial assistance under 42 U.S.C.A. §1460 [C. T. p. 578; see Appendix "A"].

Arguably, the Goldmans also contended in the Joint Pre-Trial Statement that owner-participants and redevelopers were treated unequally in violation of the Fourteenth Amendment to the United States Constitution [C. T. pp. 576-578; see Appendix "A"].

It will be noted that only two and one-half of the questions set forth in the Statement of Jurisdiction (one-half of question one, and questions two and six) were raised before the trial court.

On appeal, the Goldmans failed to assert in their brief before the California appellate courts

(i) that Article XIII, §19 of the California Constitution violated either the Fourteenth Amendment to or Article I, §10 of the United States Constitution [Goldman Opening Brief below, pp. 27-50, esp. pp. 38-41; and see Appendix "A"];

(ii) that California Health & Safety Code §§33950-33954 violated either the Fourteenth Amendment to or Article I, §10 of the United States Constitution [Goldman Opening Brief below, pp. 27-50; and see Appendix "B"]; or

(iii) that any non-compliance with 42 U.S.C.A. §1460, or the interpretation of the trial court regarding the Goldmans' standing to sue thereunder, was violative of the Fourteenth Amendment to the United States Constitution [Goldman Opening Brief below, pp. 81-88, and, partially, 95-114; see Appendix "A"]. This point was partially raised in a Petition for Rehearing [see Appendix "A"]. The only reference in the Goldman Opening Brief below to the contentions made before the trial court, but not re-asserted before the California appellate courts was by way of a recital of the issues before, and the findings of fact and conclusions of law of the trial court [Goldman Opening Brief below, pp. 1-27].

The Goldmans did contend in their brief before the California appellate courts that an alleged dis-

as to the cost of public site improvements violated the equal protection clause of the Fourteenth Amendment to the United States Constitution [Goldmans' Opening Brief below, pp. 114-137; see Appendix "A"].

In summary:

1. The Goldmans failed entirely to contend before the California courts that Article XIII, §19 of the California Constitution violated the Fourteenth Amendment to the United States Constitution.

2. The Goldmans did contend before the trial court that California Health & Safety Code §§ 33950-33954 violated the Fourteenth Amendment to the United States Constitution, but failed to re-assert this point before the California appellate courts.

3. The Goldmans did contend before the trial court that Article XIII, §19 and California Health & Safety Code §§33950-33954 violated Article I, §10 of the United States Constitution, but failed to reassert these points before the California appellate courts.

4. The Goldmans failed to assert in the trial court and in their brief on appeal that non-compliance with 42 U.S.C.A. §1460, or denying the Goldmans standing to enjoin the expenditure of federal funds allegedly wrongfully made available to the Agency because of non-compliance with §1460, violated any rights of the Goldmans under the United States Constitution.

The California Supreme Court rejected those contentions of the Goldmans which were raised in their brief [*In re Redevelopment Plan For Bunker Hill,* 61 Adv. Cal. 1, 51-57, 37 Cal. Rptr. 74 (1964)], and denied their petition for rehearing without comment.

ARGUMENT.

I.

The Goldmans Failed to Raise or Preserve Before the California Courts Questions One Through Five Set Forth in Their Statement of Jurisdiction.

It is well-settled under California practice that unless modified, the Pre-Trial Order in a case controls the issues which may be tried, and that questions not raised in the trial court will not be considered on appeal [Rule 216 (formerly Rule 8.8), Judicial Council Rules for the Superior Courts; *Everly Enterprises, Inc. v. Altman,* 54 Cal. 2d 761, 765-766, 8 Cal. Rptr. 455 (1960); *Baird v. Hodson,* 161 Cal. App. 2d 687, 690, 327 P. 2d 215 (1958); and *Jenner v. City Council,* 164 Cal. App. 2d 490, 498, 331 P. 2d 176 (1958)]. This includes constitutional issues [*Hershey v. Reclamation District No. 108,* 200 Cal. 550, 564, 254 Pac. 542; *Jenner v. City Council, supra*].

As stated in 3 Cal. Jur. 2d, Appeal and Error, §140,

> "It is a general rule of appellate review, early established and long adhered to, that questions not raised in the trial court will not be considered on appeal."

The Pre-Trial Order in the trial court incorporated the Joint Pre-Trial Statement, as amended, for the statement of issues [C. T. pp. 545-547]. No attempt was made to modify or amend the Pre-Trial Order.

In view of California practice, it is fatal to jurisdiction for the Goldmans to have failed to contend before the trial court (1) that Article XIII, §19 of the California Constitution violated the Fourteenth Amendment to the United States Constitution, and (2) that non-

compliance with 42 U.S.C.A. §1460, or denying the Goldmans standing to enjoin the expenditure of federal funds allegedly wrongfully made available to the Agency because of non-compiance with §1460, violated any rights of the Goldmans under the United States Constitution [*Bailey v. Anderson,* 326 U. S. 203, 206-207; *Mutual Life Ins. Co. v. McGrew,* 188 U. S. 291, 308; *Dewey v. Des Moines,* 173 U. S. 193, 197-198].

Had these points been raised in the trial court, the failure to assert them in the Goldmans' opening brief below would, under long-settled California practice, be deemed as a waiver and abandonment of the issues, which would therefore not be considered by the California appellate courts [*Roberts v. Krafts,* 141 Cal. 20, 25, 74 Pac. 281 (1903); *Mayne v. San Diego Elec. Ry. Co.,* 179 Cal. 173, 179, 175 Pac. 690 (1918); *Souza v. Joseph,* 22 Cal. App. 179, 190, 133 Pac. 981 (1913); *Wheeling v. Financial Indemnity Co.,* 201 Cal. App. 2d 36, 44-45, 19 Cal. Rptr. 879 (1962)].

The failure of the Goldmans to assert in their brief on appeal (1) that California Health and Safety Code §§33950-33954 violated the Fourteenth Amendment to the United States Constitution, and (2) that Article XIII, §19 and California Health & Safety Code §§33950-33954 violated Article I, §10 of the United States Constitution likewise creates a fatal jurisdictional defect as to those points [*Hulbert v. Chicago,* 202 U. S. 275, 280-281; *C. I. O. v. McAdory,* 325 U. S. 472, 477].

Any references to "unconstitutionality" with respect to the above points which may appear in the Goldmans' opening brief below, where not specifically refer-

able to the California Constitution, are at best ambiguous and are therefore presumed to refer to the California Constitution [*Miller v. Cornwall R.R. Co.*, 168 U. S. 131, 134; *Harding v. Illinois*, 196 U. S. 78, 88, *Bowe v. Scott*, 233 U. S. 658, 664-665; *Thomas v. Iowa*, 209 U. S. 258, 263].

It is submitted that no basis for the exercise of jurisdiction by this Court is present upon the record herein with respect to questions one through five set forth in the Goldmans' Statement of Jurisdiction at pages 3-4 thereof.

II.

The Questions Set Forth in the Goldmans' Statement of Jurisdiction Are Not Substantial.

A. No Important Questions of Federal Law Are Raised by the Goldmans.

Not one of the questions set forth in the Goldmans' Statement of Jurisdiction merits review by this Court. The questions raised by the Goldmans as to tax allocation financing will apply only in California and Minnesota, which are the only states which provide for such financing. Further, the only rights asserted by the Goldmans with respect to such financing are those of other governmental entities within California. The Goldmans do not attempt to point out how a decision on the matter by this Court would in any way affect or preclude future litigation between other parties, or otherwise set at rest an important, open question of policy under federal law.

The contentions of the Goldmans relating to 42 U S. C. A. Section 1460 do raise the question of whether or not a taxpayer has a sufficient interest

in the federal treasury to support an action to enjoin an allegedly illegal expenditure therefrom. However, this question is so foreclosed by prior opinions of this Court as to be lacking in substantiality. It cannot be said to be an area churning with currrent controversy.

The contentions of the Goldmans relating to owner participation are so clearly without merit that no question is raised as to the correctness of the decision of the California Supreme Court with respect thereto.

B. The Contentions of the Goldmans Relating to Tax Allocation Are Clearly Erroneous.

The Goldmans' contentions as to the tax allocation provisions of the California Constitution and States apparently are or will be twofold—(1) that these provisions are invalid because they do not require the obtaining of consent from the other governmental entities levying taxes in the redevelopment project areas before a redevelopment plan can be adopted which provides for tax allocation financing; and (2) the City Charter of the City of Los Angeles is allegedly a contract within Article I, Section 10 of the United States Constitution which contract is impaired by said allocation provisions.

1. *Article XIII, §19 and California Health and Safety Code §§ 33950-33954 Do Not Violate the Fourteenth Amendment to the United States Constitution.*

The Goldmans have not attempted to show by supporting argument in their Statement of Jurisdiction upon what basis they contend Article XIII, §19 and §§ 33950-33954 to be repugant to the Fourteenth Amendment.

Article XIII, §19 of the California Constitution provides for the use of increases in property tax revenue from redevelopment project areas derived from the increase in assessed valuation within the area brought about by redevelopment, to finance such redevelopment in whole or in part.

It also expressly ratified and authorized California Health and Safety Code §§ 33950-33954, which contain identical provisions.

In operation, these provisions operate to allow the various taxing entities such as the City, the County, etc., to impose their current tax rate on the assessed valuation of a redevelopment project area as of the last equalized assessment roll prior to the adoption of the redevelopment plan. The proceeds thereof are collected by the County Tax Assessor and disbursed to the various taxing entities in the usual way. However, the increase in valuation of the redevelopment project area is, in effect, not subject to taxation for usual City, County and District purposes. The tax funds produced by the imposition of the current tax rate of the various taxing entities on this increase in valuation, while levied and collected in the usual way, are paid to the special fund of the redevelopment agency to pay all or a portion of those project expenses not covered by the federal subsidy.

Amici curiae have sought to file a brief in support of the contention of the Goldmans here in question.

Significantly, the Goldmans have never raised the following two point raised by *amici curiae* (but have referred in their Supplement to Statement of Jurisdiction to a similar agreement made by other *amici curiae* below):

1. Do the California tax allocation provisions provide for taxation without representation?

2. May the City Council be delegated the authority to adopt redevelopment plans providing for tax allocation financing?

It is submitted, as argued in the Agency's brief in opposition to the motion of *amici curiae* for leave to file a brief, that neither of these points have merit.

The contention that the tax allocation provisions provide for taxation without representation rests upon the premise that by in effect exempting a portion of the property in the redevelopment area from taxation, those other governmental entities which also levy taxes on the redevelopment project area must increase their taxes upon property outside the project area and outside of the city. This, it is contended is taxation by the City Council upon non-city property owned by persons not represented on the City Council.

The basic fallacy in this argument is that were it not for the redevelopment project which improves the deteriorated area, there would be no increased valuation to be, in effect, temporarily exempted from taxes. Therefore, the tax rates elsewhere would, absent the redevelopment, be just as high as if no project to replace a slum or blighted area with a well-planned development had been undertaken.

Insofar as the argument may be that taxes are being illegally diverted from the other taxing entities, or that such entities are being deprived of a portion of their tax base, it is well-established that units of local government have no rights under the federal constitution as against their creator, the state [*Williams v.*

Baltimore, 289 U. S. 36, 40; see also *Mallon v. City of Long Beach,* 44 Cal. 2d 199, 209, 282 P. 2d 481 (1955)],

Further, under California law, no taxing entity ever obtains a vested right to tax any particular property [*County of Mariposa v. Merced Irr. Dist.,* 32 Cal. 2d 467, 474, 196 P. 2d 920 (1948)].

Rather than taxation without representation, the nearest analogy to the California tax allocation system of financing redevelopment in whole or part, is the system used in other states of granting a flat tax exemption to the increased valuation in redevelopment areas. This system has been upheld wherever challenged [*Murray v. La Guardia,* 291 N. Y. 320, 52 N. E. 2d 884 (1943), *cert. den.,* 321 U. S. 771; *Land Clearance Auth. v. St. Louis,* 27 S. W. 2d 58 (Mo. 1954); *Redfern v. Board of Comrs. of Jersey City,* 137 N. J. L. 356, 59 A. 2d 641 (1948); *Dodge v. The Prudential Ins. Co. of America,* 343 Mass. 378, 179 N. E. 2d 234 (1961)].

Under the reasoning of the Goldmans the City could never purchase property for streets, parks, civic buildings, or otherwise, without the consent of the other taxing agencies levying taxes thereon, because this would make the property tax exempt, thereby causing an increase in the taxes levied by such other agencies upon other property outside of the City. This obviously is not the law.

It is submitted that the contention that the tax allocation provisions of California law provide for taxation without representation cannot be sustained.

It is also difficult to imagine what other agency should be empowered to adopt redevelopment plans

other than the local legislative body of the community within which the slum area is located. The Goldmans appear to contend that such an agency is a "partisan agency" and therefore cannot be given such authority, when tax allocation is involved. This contention would appear to be fully answered by the authorities relating to the contentions regarding taxation without representation, above.

2. *Article XIII, §19 of the California Constitution and California Health and Safety Code §§ 33950-33954 Do Not Violate Article I, §10 of the United States Constitution.*

The Goldmans have contended that the City Charter of the City is a contract protected by Article I, §10 of the United States Constitution, and that the City may not take advantage of the tax allocation provisions without amending its Charter, which provides for the disbursement of municipal taxes.

This position is completely untenable. The City had full power to adopt the Final Plan, including its tax allocation provisions. The City has ample authority under its Charter to avail itself of the powers granted to cities under the California Redevelopment Law. Thus, Section 2 of the Charter provides in part as follows:

> "Sec. 2. The City of Los Angeles, in addition to any other rights and powers now held by it, or that hereafter may be granted to it under the constitution or laws of the state, shall have the right and power, subject to the restrictions in this charter contained:
>
> * * *

"(5) To exercise any or all rights, powers, privileges and procedures now or hereafter established or authorized for municipalities, or for the City of Los Angeles, by any law of the State of California, by this charter, or by other lawful authority.

* * *

"(10) To exercise each and every of the powers which a municipal corporation might or could exercise under the Constitution of the State of California." (Stats. 1925, Res. Ch. 25, p. 1028).

Further, when a city operates under a law such as the California Redevelopment Law, the terms of that law govern, even though procedures required by the city's Charter may differ [*Drake v. City of Los Angeles,* 38 Cal. 2d 872, 874, 243 P. 2d 525 (1952)]. In such cases the city operates as an administrative agency of the state, designated by the state to carry out state programs at the local level [*Housing Authority v. City of Los Angeles,* 38 Cal. 2d 853, 862, 243 P. 2d 515 (1952); *Andrews v. City of Los Angeles,* 175 Cal. App. 2d 459, 461-463, 346 P. 2d 457 (1959)].

To the extent it may be the Goldmans' contention that the tax allocation provisions of Article XIII, §19 and §§ 33950-33954 invade the taxing power of the City as set out in its Charter, it is well-settled in California that the state constitution may impinge upon the taxing power of municipalities contained in their charters [*Ainsworth v. Bryant,* 34 Cal. 2d 465, 469-473, 211 P. 2d 564 (1949); *City of Glendale v. Trondsen,* 48 Cal. 2d 93, 98, 308 P. 2d 1 (1957); *West Coast Advertising Co. v. San Francisco,* 14 Cal. 2d 516, 524, 95 P. 2d 138 (1939); *Cedars of Lebanon Hospital v.*

Los Angeles County, 35 Cal. 2d 729, 221 P. 2d 31 (1950)].

Further, this Court has held that a municipal charter is not a contract within the purview of Article I, §10 of the United States Constitution [*Covington v. Kentucky*, 173 U. S. 231, 241], as has the California Supreme Court [*County of Tulare v. City of Dinuba*, 188 Cal. 664, 669, 206 Pac. 983 (1922)].

It is submitted that the contentions of the Goldmans that Article XIII, §19 of the California Constitution and California Health and Safety Code §§ 33950-33954 violate Article I, §10 of the United States Constitution are wholly without substance.

3. *The Contentions of the Goldmans Respecting 42 U.S.C. §1460 Are Totally Baseless.*

The Goldmans have contended in their Statement of Jurisdiction that the California Supreme Court violated procedural due process under the Fourteenth Amendment to the United States Constitution by determining that:

1. 42 U. S. C. A. §1460(c) did not place a mandatory requirement on the Agency to make a specific finding that the redevelopment of the project area for non-residential uses was necessary to the proper development of the community.

2. The Goldmans had no standing to enjoin the expenditure of federal funds on the ground that the project was not eligible for federal assistance under §1460(c).

3. The Goldmans, had they standing to maintain such a suit, had chosen the wrong forum.

Each of the above contentions is based on the completely erroneous premise, steadfastly adhered to by the Goldmans, that §1460(c) does not permit the redevelopment of a predominantly residential area for predominantly non-residential uses unless the local agency makes a finding that such non-residential use is necessary to the proper development of the community. The project area herein is predominantly residential [C. T. p. 83].

Quite to the contrary, at all times since its enactment, §1460(c) has specifically authorized and now authorizes, the redevelopment of a predominantly residential area (such as the Bunker Hill project area here involved) for whatever uses the local authorities deem most appropriate.

The Housing Act of 1949, as enacted and as amended, of which §1460(c) is a part, has been concerned with the improvement of housing, either by the elimination of slum housing, or the production of good housing. Therefore §1460(c) has always provided, and now provides for full federal financial assistance to redevelopment projects involving either (1) an area predominantly residential to begin with, in which case no limitations are put on re-use, or (2) an area which will be redeveloped for predominantly residential use.

This is quite clear from the statute itself, throughout its various amendments, and from the accompanying legislative history [Act of July 15, 1949, ch. 388, Title I, §110, 63 Stat. 420 (Senate Report No. 84, Feb. 25, 1949, 81st Cong., 1st Sess.); Act of August 2, 1954, ch. 649, Title III, §311, 68 Stat. 626 (Senate Report No. 1472, May 28, 1954, 83rd Cong., 2nd Sess; Con-

ference Report, Statement of the Managers on the Part of the House, U.S. Code Cong. and Adm. News (1954), p. 2841); Act of August 11, 1955 ch. 783, Title I, §106(c), 69 Stat. 637 (House report No. 913, June 25, 1955, 84th Cong., 1st Sess.); Act of August 7, 1956, ch. 1029, Title III, §302(b)-(1), 70 Stat. 1097 (House Report No. 2363, June 15, 1956, 84th Cong., 2nd Sess); Act of September 23, 1959, P.L. 86-372, Title IV, §413, 73 Stat. 675, 677 (Senate Report 924, Sept. 28, 1959, 86th Cong., 1st Sess); Act of June 30, 1961, P.L. 87-60, Title III, §308, 75 Stat. 166, 168, 172 (Senate Report No. 281, 87th Cong., 1st Sess.)].

Attached as Appendix "B" hereto is a complete analysis of §1460(c), its legislative history and its administrative construction excerpted from the Agency's brief before the California appellate courts.

The language upon which the Goldmans rely was added to §1460(c) in order to broaden the authority of the federal administrator to make loans and grants to redevelopment projects involving areas which were predominantly non-residential to begin with, and which were to be redeveloped for predominantly non-residential uses. Previously, the federal administrator was authorized by §1460(c) to extend financial aid to such projects only if the area contained a substantial number of slum dwellings. This latter requirement was deleted in 1959, and in its place was substituted the requirement that a finding be made that redevelopment of the non-residential area for non-residential uses was necessary for the proper development of the community [Senate Report No. 924, Sept. 8, 1959, 86th Cong., 1st Sess. U. S. Code Cong. and Adm. News (1959), at page 2864; see Appendix "B"].

It is readily apparent from a reading of §1460(e), as amended from time to time, that the contentions of the Goldmans that some finding of necessity was necessary to justify the federal administrator in extending federal financial assistance to the redevelopment project involved herein is based simply on a misreading and misinterpretation of that section.

However, even assuming that the Bunker Hill project were not eligible for federal financial assistance the Goldmans would have no standing to enjoin the expenditure of federal funds on the ground that the federal administrator erred in making them available [*Harrison-Halstead Com. Group, Inc. v. H.H.F.A.*, 310 F. 2d 99 (7th Cir. 1962); *Gart v. Cole*, 263 F. 2d 244, 250 (2d Cir. 1959) *cert. den.* 359 U. S. 978; *Pittsburgh Hotels Ass'n, Inc. v. Urban Redevelopment Auth.*, 202 F. Supp. 486, 492-493 (W. D. Pa. 1962), aff'd 309 F. 2d 186 (3rd Cir. 1962); *Kaskel v. Impellitteri*, 121 N. Y. S. 2d 848, 854 (N.Y. Sup. Ct. 1953), aff'd 115 N. E. 2d 659 (N. Y. 1953); see Appendix "B"].

These cases stand upon an obvious rationale: (1) the federal act creates no cause of action in taxpayers or anyone else in this regard; and (2) no taxpayer has a sufficient interest in funds in the federal treasury to create a basis for a taxpayer's action to enjoin the expenditure of such funds [*Frothingham v. Mellon*, 262 U. S. 447, 486; *Alabama Power Co. v. Ickes*, 302 U. S. 464, 478-479].

Furthermore, if the Goldmans had such a cause of action it appears that they chose the wrong forum in which to prosecute it, in that state courts have no jurisdiction over the acts of federal officials acting as such in the administration of federal law [*Tennessee*

Electric Power Co. v. Tennessee Valley Authority, 306 U. S. 118; *Hunter v. City of New York*, 121 N. Y. S. 2d 841, 847-848 (N. Y. Sup. Ct. 1953); see Appendix "B"].

4. *The Goldmans' Contention That the Final Plan Discriminates Between Owner-Participants and Redevelopers in Respect of the Costs of Public Site Improvements in Violation of the Equal Protection Clause to the Fourteenth Amendment to the United States Constitution Is Without Basis.*

The Goldmans contend that the provisions of the Final Plan which require that owner-participants assume financial responsibility for a pro rata share of the costs of site improvements benefiting their property while redevelopers are allegedly exempted from this requirement constitutes a discrimination repugnant to the United States Constitution.

Under the Final Plan, owner-participants are required to assume financial responsibility for their pro rata share of the cost of public site improvements to the extent it results in a net benefit to the re-use value of their land [Agency Ex. 39.6, pp. 82-84; Ex. 39.8, pp. 64-66; Ex. 46.5, p. 12].

Likewise, the Agency is required to sell the land, once cleared and improved, for its fair market value for the re-uses specified in the Final Plan [*In re Redevelopment Plan For Bunker Hill*, 61 Adv. Cal. 1, 43, 37 Cal. Rptr. 74 (1964)].

These requirements involve no exemption and no discrimination. Owner-participants and redevelopers constitute two distinct classes. A person who retains land benefited by public improvements would seem appropriately charged a pro rata amount of the cost to the extent he receives a benefit through enhanced re-use value of his land. Street and sewer assessments are common examples of this type of process.

However, it is not possible to talk in terms of pro rata shares of the costs of improvements when the land is being sold after it is improved. The Agency simply could not sell the land for more than its fair market value, and would be subject to censure if it proposed to sell it for less.

Attached hereto as Appendix "C" is an excerpt from the Agency's brief below, analyzing this question in greater detail.

It is submitted that no discrimination exists in the Final Plan between owner-participants and redevelopers, and that the contention of the Goldmans relating thereto is completely lacking in substance.

Conclusion.

The Goldmans have utterly failed to raise or preserve below five of the six questions they seek to advance here, as to which, therefore, a fatal jurisdictional defect exists.

None of the questions they raise merit review by this Court. They all relate either to narrow questions

involving the particular facts of this case or which are completely foreclosed by prior opinions of this Court.

Additionally, the California Supreme Court obviously decided correctly those issues properly placed before it. The issues the Goldmans seek to raise here are utterly lacking in substance,

It is respectfully submitted that the Agency's Motion to Affirm or Dismiss should be granted.

Respectfully submitted,

HENRY O. DUQUE,
Attorney for Respondent.

ADAMS, DUQUE & HAZELTINE,
BRUCE A. BECKMAN,
EUGENE B. JACOBS,
Of Counsel.

Trial Court [Goldman Joint Pre-Trial Statement, C. T. p. 575, line 26, to p. 576, line 23; and C. T. p. 579, lines 8-20]:

B. Sections 33950 to 33954 of the California Health and Safety Code, which authorize the inclusion in the Final Plan of Sections C.8.d. (1) and (2), providing for the allocation of the increase in taxes on the property in the Project Area due to the redevelopment thereof to pay the principal and interest on bonds issued by the Agency to finance, in part, such redevelopmen., are void for uncertainty in violation of the due process clause of the Fourteenth Amendment and constitute an unlawful delegation of power belonging to other taxing agencies receiving taxes from the property within the Project Area, because said sections do not clearly provide that the consent of such other taxing agencies must first be obtained before such tax allocation may be made.

1. Sections C.8.d. (1) and (2) of the Final Plan provide for an illegal appropriation by the City Council of funds belonging to other taxing agencies, in that they provide for such tax allocation without first requiring the City Council to obtain consent to such allocation from such other taxing agencies.

C. The ordinance approving Section C.8.d. (1) of the Final Plan is unconstitutional as applied to the City of Los Angeles, a chartered city, in that it provides for the impairment of the obligations of a contract, to wit, the charter of the City of Los Angeles, in violation of Article I, Section 10 of the Constitution of the United States, by providing for an allocation or relinquishment of future taxes to become due to the City in a manner not authorized by said charter. Such a relinquishment of future taxes can only be accomplished by an amendment to said charter, not by the adoption of an ordinance approving a redevelopment plan.

K. The charter of the City of Los Angeles is a contract protected by Article I, Section 10 of the United States Constitution. Those provisions of Article XIII, Section 19, of the Constitution of the State of California and Sections 33950 and 33954 of the California Health and Safety Code upon which the Final Plan is based, is unconstitutional in violation of Article I, Section 10 of the United States Constitution in that said Article XIII, Section 19 and Sections 33950 and 33954 have each respectively authorized the legislative bodies of municipalities which includes the City of Los Angeles to in effect, impliedly cause an amendment of its charter pertaining to its tax-

APPENDIX "A".

CONTENTIONS OF THE GOLDMANS AS RAISED IN THE CALIFORNIA TRIAL COURT AND APPELLATE COURTS AND IN THEIR STATEMENT OF JURISDICTION.

I.

Contentions Re Tax Allocation.

Calif. Appellate Courts (Goldman Opening Brief, pp. 27, 30, 33, 36, 44 and 46):

II

SECTIONS 33954 OF THE CALIFORNIA HEALTH AND SAFETY CODE, WHICH AUTHORIZE THE INCLUSION IN THE FINAL PLAN OF SECTIONS C.8.d. (1) and (2), PROVIDING FOR THE ALLOCATION OF THE INCREASE OF TAXES ON THE PROPERTY IN THE PROJECT AREA DUE TO THE REDEVELOPMENT THEREOF, TO PAY THE PRINCIPAL AND INTEREST ON BONDS ISSUED BY THE AGENCY TO FINANCE, IN PART, SUCH REDEVELOPMENT, ARE VOID FOR UNCERTAINTY AND CONSTITUTE AN UNLAWFUL DELEGATION OF POWER BELONGING TO OTHER TAXING AGENCIES RECEIVING TAXES FROM THE PROPERTY WITHIN THE PROJECT AREA, BECAUSE SAID SECTIONS DO NOT CLEARLY PROVIDE THAT THE CONSENT OF SUCH OTHER TAXING AGENCIES MUST FIRST BE OBTAINED BEFORE SUCH TAX ALLOCATION MAY BE MADE.

B. THE CALIFORNIA REDEVELOPMENT ACT MAY NOT BE INTERPRETED TO MEAN THAT LEGISLATIVE AUTHORITY HAS BEEN GIVEN TO MUNICIPALITIES TO TAKE AWAY WITHOUT THE CONSENT OF OTHER PUBLIC TAXING AGENCIES TAXES WHICH THEY MAY BE LAWFULLY ENTITLED TO RECEIVE

C. A STATUTE WHICH IS VAGUE AND UNCERTAIN IS INVALID

III

A. THE ORDINANCE APPROVING SECTION C.8.d. (1) OF THE FINAL PLAN IS ULTRA VIRES AS APPLIED TO THE CITY OF LOS ANGELES, A CHARTERED CITY, BY PROVIDING FOR AN ALLOCATION OR RELINQUISHMENT OF FUTURE TAXES TO BECOME DUE TO THE CITY IN A MANNER NOT AUTHORIZED BY SAID CHARTER. SUCH A RELINQUISHMENT OF FUTURE TAXES CAN ONLY BE ACCOMPLISHED BY AN AMENDMENT TO SAID CHARTER, NOT BY THE ADOPTION OF AN ORDINANCE APPROVING A REDEVELOPMENT PLAN

B. THE CHARTER OF THE CITY OF LOS ANGELES CONTAINS A "MUNICIPAL AFFAIRS" PRO-

U. S. Supreme Court (Juris. St., p. 3):

1. Do Article XIII, Section 19, of the California Constitution and Sections 33950 through 33954 of the Health & Safety Code of California violate the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution?

2. Do the provisions of Article XIII, Section 19, of the California Constitution, and Sections 33950 and 33954 inclusive of the Health & Safety Code violate Article I, Section 10, of the United States Constitution?

III

A. THE ORDINANCE APPROVING SECTION C.8.d. (1) OF THE FINAL PLAN IS ULTRA VIRES AS APPLIED TO THE CITY OF LOS ANGELES, A CHARTERED CITY, BY PROVIDING FOR AN ALLOCATION OR RELINQUISHMENT OF FUTURE TAXES TO BECOME DUE TO THE CITY IN A MANNER NOT AUTHORIZED BY SAID CHARTER. SUCH A RELINQUISHMENT OF FUTURE TAXES CAN ONLY BE ACCOMPLISHED BY AN AMENDMENT TO SAID CHARTER, NOT BY THE ADOPTION OF AN ORDINANCE APPROVING A REDEVELOPMENT PLAN

B. THE CHARTER OF THE CITY OF LOS ANGELES CONTAINS A "MUNICIPAL AFFAIRS" PROVISION GIVNG THE CITY COMPLETE CONTROL OVER ITS MUNICIPAL AFFAIRS

C. THE TAXING POWER OF A CITY IS A MUNCIPAL AFFAIR

[A review of the argument under each of the above headings will reveal that it was made exclusively in terms of California law].

Trial Court [Goldman Joint Pre-Trial Statement, C. T. p. 562, lines 7-14 (statement of issues); C. T. p. 578, lines 10-22 (contentions respecting the issues)]:

H. Is the Final Plan incomplete and void for uncertainty, and does it constitute an unlawful delegation of legislative power by the Agency by failing to provide an ascertainable standard to guide the Agency in determining whether or not a predominantly residential area can be redeveloped for predominantly commercial uses?

I. Does 42 U.S.C.A. Section 1460 authorize the use of Federal funds for the redevelopment of predominantly residential areas for predominantly commercial uses?

H. The Final Plan is incomplete and void for uncertainty, in violation of the due process clause of the Fourteenth Amendment and constitutes an unlawful delegation of legislative power in that it does not provide an ascertainable standard to enable the Agency to determine whether or not predominantly residential property may be acquired by condemnation for conversion into a predominantly commercial area when said property is suitable for residential use.

1. Under 42 U.S.C.A. Section 1460, Federal funds may not be expended by a municipality or redevelopment agency for the purpose of acquiring by condemnation land which is predominantly residential and converting said land to commercial use when the land is suitable for residential use.

II.

Contentions Re Non-Residential Use and 42 U.S.C.A. Section 1460.

Calif. Appellate Courts (Goldman Opening Brief, pp. 50, 60, 63, 74 and 81):

IV

A. THE REDEVELOPMENT ACT IS INCOMPLETE AND VOID FOR UNCERTAINTY IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT AND CONSTITUTES AN UNLAWFUL DELEGATION OF LEGISLATIVE POWER, IN THAT IT DOES NOT PROVIDE AN ASCERTAINABLE STANDARD TO ENABLE THE AGENCY TO DETERMINE WHETHER OR NOT PREDOMINANTLY RESIDENTIAL PROPERTY MAY BE ACQUIRED BY CONDEMNATION FOR CONVERSION INTO A PREDOMINANTLY COMMERCIAL AREA WHEN SAID PROPERTY IS SUITABLE FOR A RESIDENTIAL USE

B. THE PRESUMPTION THAT OFFICIAL DUTY WAS COMPLIED WITH IS A REBUTTABLE PRESUMPTION

C. THE SUPREME COURTS OF GEORGIA, FLORIDA AND SOUTH CAROLINA HAVE HELD THAT STATE REDEVELOPMENT STATUTES WHICH AUTHORIZE THE APPROPRIATION OF PREDOMINANTLY RESIDENTIAL LAND INTO PREDOMINANTLY COMMERCIAL AREAS VIOLATE CONSTITUTIONAL PRINCIPLES

V

THE FINDINGS OF A CITY COUNCIL AND REDEVELOPMENT AGENCY APPROVING A REDEVELOPMENT PROJECT ARE SUBJECT TO JUDICIAL REVIEW

VI

COMPLIANCE BY THE LOCAL PUBLIC AGENCY OF ALL STATUTORY DETERMINATIONS AND REQUIREMENTS OF THE FEDERAL URBAN RENEWAL ACT IS A CONDITION PRECEDENT TO THE VALIDITY OF A REDEVELOPMENT PLAN

[A review of the argument in the Goldman Opening Brief with respect to the above headings will reveal that no contention was made that the trial courts' construction of §1460, or the Goldmans' standing to challenge the decision of the federal administrator that the Final Plan Complies therewith, was violative of any rights of the Goldmans under the United States Constitution].

Goldman Petition for Rehearing, p. 2:

6. The Court erred in determining that the Petitioners did not have capacity to question and enforce in a state court the compliance of mandatory conditions precedent imposed upon

U. S. Supreme Court (Juris. St. pp. 3-4):

3. Did the Supreme Court of California violate procedural due process of law as required by the 14th Amendment of the United States Constitution in determining that the petitioners herein did not have capacity to question and enforce in a State Court the compliance of mandatory conditions precedent imposed upon the Community Re-Development Agency by Section 1460(c) of the Housing Act of 1949, as amended?

4. Did the Supreme Court of California violate procedural due process of law as required by the 14th Amendment of the United States Constitution in determining that a Municipal Taxpayer and Property Owner directly affected may not question in a State Court, under a State Statute (Section 33746 Health & Safety Code) the legal authority of a municipality and/or of a redevelopment agency to use federal funds to illegally acquire by eminent domain land situated in an area to be developed under the provisions of the Housing Act of 1949 and the Redevelopment Act of California?

5. Did the Supreme Court of California violate procedural due process of law in violation of the 14th Amendment of the United States Constitution in determining that Section 1460(c) of the Housing Act of 1949, as amended, was not a mandatory condition precedent imposed upon the redevelopment agency of the City of Los Angeles, and the City of Los Angeles, respectively?

Trial Court [Goldmans Joint Pre-Trial Statement, C. T. p. 576, line 24, to p. 578, line 9]:

D. The Community Redevelopment Law of the State of California (Section 33000 *et seq.* of the California Health and Safety Code) is void for uncertainty in violation of the due process clause of the Fourteenth Amendment in that it has failed to provide clearly an ascertainable guide to enable local legislative bodies to determine what covenants, conditions and restrictions may lawfully be included in a redevelopment plan, especially in regard to the manner or method of the assessment by the local legislative body of the cost of the public site improvements to be made in the Project Area.

E. The Final Plan is void for uncertainty in violation of the due process clause of the Fourteenth Amendment and constitutes an illegal delegation of power by the City Council in that the Final Plan fails to provide clearly for the method and manner of the assessment of the cost of the removal of the existing public site improvements in the Project Area, and does not state whether or not the assessment for the cost of the installation of new public site improvements in the Project Area shall be carried out in the manner required by the charter of the City of Los Angeles.

F. The Final Plan is incomplete, void for uncertainty, in violation of the due process clause of the Fourteenth Amendment and constitutes an unlawful delegation of legislative and judicial power by the City Council in that said Plan contains no provisions for the method and manner in which the cost of demolition and removal of existing structures and/or removal of existing public site improvements (which are paid for by the Agency) are to be repaid by the owners of the land who agree to participate, or by the redevelopers who purchase said land from the Agency.

G. The Final Plan, in providing that the cleared land in the Project Area shall be sold or leased for its "fair value for uses in accord with the Plan," is void for uncertainty in violation of the due process clause of the Fourteenth Amendment in that it does not provide an ascertainable standard to guide the Agency in determining whether, in arriving at what constitutes such fair value, it must include the acquisition price of land, the cost of demolition and clearance of the land, the cost of demolition and clearance of existing public site improvements, and the cost of the installation of new public site improvements. The Agency's interpretation of "fair value" violates Article I, Section 2 of the Constitution of the State of California and the Fourteenth Amendment to the Constitution of the United States in that such interpretation does not have a uniform application. Such interpretation also constitutes the granting of special privileges or immunities to an arbitrary class of persons, to wit: the developers contrary to the provisions of Article I, Section 21 of the Constitution of the State of California and the Fourteenth Amendment to the Constitution of the United States.

III.

Contentions Re Cost of Site Improvements and/or Owner Participation.

Calif. Appellate Courts (Goldman Opening Brief, pp. 95, 114 and 125):

VIII

THE GOLDMANS AS THE OWNERS OF PROPERTY WITHIN THE PROJECT AND AS TAXPAYERS RESPECTIVELY DIRECTLY AFFECTED BY THE ADOPTION OF THE REDEVELOPMENT PLAN HAVE CAPACITY TO TEST THE VALIDITY OF THE ORDINANCE AND THE CONSTITUTIONALITY OF THE CALIFORNIA REDEVELOPMENT ACT

A. THE PROVISIONS OF THE REDEVELOPMENT PLAN WHICH REQUIRE AN OWNER WHO AGREES TO PARTICIPATE IN THE REDEVELOPMENT PROJECT TO ASSUME FINANCIAL RESPONSIBILITY FOR HIS PRO RATA SHARE OF THE COSTS OF THE NECESSARY PUBLIC SITE IMPROVEMENTS WHILE AT THE SAME TIME EXEMPTING THE REDEVELOPERS FROM A SIMILAR FINANCIAL RESPONSIBILITY VIOLATES THE EQUAL PROTECTION PROVISIONS OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION

B. OWNER PARTICIPANTS ARE IN THE SAME CLASS AS REDEVELOPERS

U. S. Supreme Court (Juris. St. p. 4):

6. Does the ordinance approving the re-development plan violate the equal protection clause of the 14th amendment of the United States Constitution, in imposing upon a participating owner the assumption of his pro rata share of public site improvements, whereas redevelopers are exempted from a similar financial responsibility?

APPENDIX "B".

EXCERPT FROM THE AGENCY'S BRIEF BELOW, RELATING TO 42 U.S.C.A. SECTION 1460.

E. A Redevelopment Plan Providing for the Redevelopment of a Predominantly Residential Area for Predominantly Non-Residential Uses (Such as the Final Plan Herein) Is Eligible for Full Federal Financial Assistance.

The Goldmans' brief, in section IV, at page 52, through Section VI, page 88, sets forth the contention that the Final Plan is ineligible for federal financial assistance under the Housing Act of 1949, as amended (42 U.S.C.A., Sections 1441, *et seq.*).

In essence, this contention is that federal funds cannot be made available to aid in the financing of the project because 42 U.S.C.A. Section 1460(c) required, at the time of the approval of the Final Plan by the federal administrator and by the City Council, that where a predominantly residential area is to be redeveloped for predominantly non-residential use, federal funds could be made available only if the City Council made an express finding that such non-residential use is necessary to the proper development of the community. It is contended that such finding was not made. This contention appears to be based on a misinterpretation and misreading of the 1959 amendment to Section 1460(c).

Preliminarily, it should be noted that the Project Area was and is a predominantly residential area. This was admitted by the Goldmans in their Joint Pre-Trial Statement below [Clk. Tr. p. 560], and the trial court so found [Clk. Tr. p. 83, lines 2 and 3]. The Final

Plan was approved for federal financial assistance by the federal administrator prior to April 30, 1958 [Agency Ex. 47; Clk. Tr. p. 560]. The City Council adopted the Final Plan on March 31, 1959 [Clk. Tr. p. 92]. The Agency's Loan and Grant Contract with the HHFA became effective on December 2, 1959 [Agency Ex. 46, letter from the Urban Renewal Administration to the Agency].

Section 1460(c) has been amended a number of times between 1949 and the present. However, insofar as the Goldmans' contentions are concerned, it makes no difference which version of the section is applicable to the Final Plan, because the Final Plan qualifies for full federal financial assistance under the section as initially drafted, as it presently exists, and in all of its permutations in between.

Section 1460(c) has at all times since its inception specifically authorized, and now authorizes, full federal financial assistance to projects, such as the instant project, providing for the redevelopment of predominantly residential areas for predominantly non-residential uses, without the necessity of any finding as to the necessity of such non-residential uses to the proper development of the community. This is clearly shown by the legislative history of the section.

The Legislative History of Section 1460(c).

Section 1460, which is entitled "definitions", by defining terms used in preceding sections, especially sections 1452, 1453 and 1455, sets out criteria for project eligibility for federal financial assistance under the Housing Act of 1949, as amended.

As originally enacted by Act of July 15, 1949, ch. 388, Title I, Section 110, 63 Stat. 420, Section 1460(c) read in part as follows:

> "(c) 'Project' may include (1) acquisition of (i) a slum area or a deteriorated or deteriorating area which is predominantly residential in character, or (ii) any other deteriorated or deteriorating area which is to be developed or redeveloped for predominantly residential uses . . ."

Senate Report No. 84, February 25, 1949, 81st Cong., 1st Sess., U. S. Code Cong. Service (1949) at page 1563 states:

> "TYPES OF PROJECTS COVERED
>
> "The pending bill limits Federal financial assistance to the assembly and clearance of areas which either are predominantly residential or which will be redeveloped primarily for residential use. This limitation is fully justified in view of the fact that the primary purpose of Federal aid in this field is to help remove the impact of the slums on human lives rather than simply to assist in the redevelopment or rebuilding of cities.
>
> "At the same time this requirement will not interfere with the carrying out of effective local programs which will combine the clearance of slums with sound local plans for the development and redevelopment of communities. *Most slums and blighted areas are predominantly residential in character and, in these cases, the bill would permit their redevelopment for whatever new uses are considered most appropriate by the locality. . . .*" (Emphasis added).

The Report further states, in Section XI thereof, quoting the recommendations of the Senate subcommittee on housing and urban redevelopment, at page 1582:

> "'The subcommittee is not convinced that the Federal Government should embark upon a general program of aid to cities looking to their rebuilding in more attractive and economical patterns. It does suggest, however, that because of the accepted national interest in housing conditions, the Federal Government should provide aid where the area in question is to be redeveloped primarily for residential use or where the area is now predominantly residential in character and the clearance of the area would in itself serve a public purpose through the removal of unsafe and unsanitary dwelling structures. *In the latter case, aid should not be conditioned on the reuse of the area for housing purposes but should be available for whatever use the cities, through official planning agencies, should determine to be appropriate.*" (Emphasis added).

It is quite clear from these reports that the Housing Act of 1949, as originally enacted, was primarily concerned with improving housing conditions. It is also clear that the Act sought to accomplish this improvement by either (1) assisting projects which would accomplish the elimination of slums in predominantly residential areas, or (2) assisting projects which would increase the amount of decent housing facilities by redeveloping blighted areas for predominantly residential uses.

Since one of the purposes of the Act, that of slum clearance, would be accomplished by the mere elimination of blighted predominantly residential areas, the Act

imposed no restrictions on the reuses to which such areas might be put under the urban renewal plans therefor. Since the Project Area is predominantly residential, the Final Plan obviously qualifies for federal financial assistance under Section 1460(c), as originally enacted.

Where the redevelopment of blighted, predominantly non-residential areas was concerned, the purpose of bettering housing conditions could only be met if the areas were redeveloped for residential uses. Therefore, the Act, through Section 1460(c), imposed the requirement that federal financial assistance could only be extended to projects covering predominantly non-residential areas if such areas were to be redeveloped for predominantly residential uses.

This general format has been retained in the Act to this date. The subsequent changes set out below merely made exceptions to the "predominantly residential" requirement, broadening the authority of the federal administrator to extend loans and grants to projects involving the redevelopment of non-residential areas for non-residential uses.

As originally enacted Title I of the Housing Act of 1949 provided for federal financial assistance only to redevelopment projects. In 1954 Title I was expanded to include the conservation of deteriorating areas as well as the redevelopment thereof. As part of this change Section 1460(c) was amended by Act of August 2, 1954, ch. 649, Title III, Section 311, 68 Stat. 626, to read in part as follows:

> "(c) . . . *And provided further,* That financial assistance shall not be extended under this title for any project involving slum clearance and

redevelopment of an area which is not clearly predominantly residential in character unless such area is to be redeveloped for predominantly residential uses . . . ."

Senate Report No. 1472, May 28, 1954, 83rd Cong., 2nd Sess., U. S. Code Cong. and Adm. News (1954), at page 2760, states:

"Your committee desires to emphasize again that Title I of the Housing Act of 1949 is directed not merely at the elimination and redevelopment of unsightly slums and blighted areas—its primary and principal objective is the improvement of the housing conditions of American families. It seeks the accomplishment of that basic objective in two ways —the elimination of slums and other inadequate housing, and an increase in the supply of good housing. To be eligible for financial assistance, therefor, the original provisions of title I required that a project must result either in the elimination of slum housing or in the production of good housing in a well-planned residential neighborhood. Thus, under the provisions of existing law, financial assistance may be made available for clearing a slum area, or a blighted residential area, whether it is to be redeveloped for either residential use, or commercial or industrial use, or a combination of such uses. However, if the area is not presently predominantly residential in character, financial assistance may be made available only if the area is to be redeveloped for predominantly residential uses.

"The bill as passed by the House deleted these existing provisions of law and substituted pro-

visions which would have established as the general criteria of eligibility the achievement of 'sound community objectives for the establishment and preservation of well-planned residential neighborhoods.' Your committee felt that such general criteria were too vague and could be construed in such a way as to permit a major change in the basic objective of the existing law. Accordingly, your committee substituted a provision (included in sec. 311 of the bill) designed to retain essentially the same provision of existing law in this respect and thus assure that the principal and primary purpose of the existing law would be retained. The provision substituted by your committee requires that no assistance may be made available for any project involving slum clearance and redevelopment of an area which is not clearly predominantly residential in character unless such area is to be redeveloped for predominantly residential uses, . . ."

The Conference Report, Statement of the Managers on the Part of the House, U. S. Code Cong. and Adm. News (1954), at page 2841, states:

"The House bill changed the requirements established for a project in existing law and substituted provisions establishing as the general criteria of eligibility for an urban renewal project the achievement of 'sound community objectives for the establishment and preservation of well-planned residential neighborhoods.' *Under existing law loans and capital grants may be made available for clearing a slum or blighted residential area, whether it is to be redeveloped for residential use or for commercial or industrial use or for a combination of such*

uses; but if the area is not already predominantly residential in character, such financial assistance may be made available only if it is to be redeveloped for predominantly residential uses. *The Senate amendment deleted the House provisions and reinstated existing law* by prohibiting loans and capital grants for projects involving slum clearance and redevelopment of areas not clearly predominantly residential in character unless such redevelopment is for predominantly residential uses; . . ."

". . . The conference substitute retains the Senate amendment." (Emphasis added).

These reports clearly indicate that the 1954 amendment to Section 1460(c) was intended to retain the same basic criteria for project eligibility for federal financial assistance established by the original Act, *i.e.*, that the area either be clearly predominantly residential to begin with, or be redeveloped for predominantly residential uses.

In 1955, Section 1460(c) was amended by Act of August 11, 1955, ch. 783, Title I, Section 106(c), 69 Stat. 637, to authorize loans to projects providing for the redevelopment of open land or predominantly open areas for non-residential uses. House Report No. 913, June 25, 1955, 84th Cong., 1st Sess., U. S. Code Cong. and Adm. News (1955), at page 2922, states, with respect to the purpose of the amendment:

"The bill as amended by your committee would authorize loans and advances . . . to assist in the redevelopment of either predominantly open land or open land for industrial or other non-residential uses. . . .

". . .

". . . Under the present law, land which is not predominantly residential in character cannot (except in certain limited cases) be developed for industrial or other nonresidential uses."

It is quite apparent from this report that the 1955 amendment was designed to expand the types of areas which might, consonant with receiving federal assistance, be redeveloped for non-residential uses to include not only areas which were predominantly residential to begin with and areas not predominantly residential but containing a substantial number of slum dwellings, the elimination of which would further the purposes of the Act, but also predominantly open or open land areas, subject to certain limitations imposed by the amendment.

Section 1460(c) was again amended in 1956, by Act of August 7, 1956, ch. 1029, Title III, Section 302(b)-(1), 70 Stat. 1097. This amendment was part of a simplification of the Housing Act of 1949. After the 1954 expansion of Title I to include rehabilitation and conservation projects in addition to redevelopment projects, the Act required both an urban renewal plan for the overall area and a separate redevelopment plan for any part of a renewal area to be cleared of slums or redeveloped. The 1956 amendments consolidated the provisions as to rehabilitation, conservation and redevelopment, and deleted the requirement of a separate redevelopment plan in addition to an urban renewal plan.

This is set forth in House Report No. 2363, June 15, 1956, 84th Cong., 2nd Sess., U. S. Code Cong. and Adm. News (1956), at page 4536:

"When the title I program was broadened in the Housing Act of 1954 to cover rehabilitation and

conservation as well as slum clearance and redevelopment it was provided that for any part of an urban renewal area that was to be cleared of slums or redeveloped there would also have to be a redevelopment plan approved by the governing body of the locality. Since the prescribed contents of an urban renewal plan include the items that would appropriately be included in a redevelopment plan and since approval of the local governing body is required for an urban renewal plan it would appear that the requirements with respect to a separate redevelopment plan only increase paper work and serve no useful purpose. Accordingly the bill would amend sections 105 and 110 of title I of the act so as to remove the provisions relating to redevelopment plan requirements."

Under the 1954 version of Section 1460(c), the requirement that an area either be clearly predominantly residential to begin with or be projected for predominantly residential uses under the plan therefor applied only to projects involving slum clearance and redevelopment. The 1956 amendment merely made this requirement applicable to all urban renewal projects, in keeping with the consolidation of the provisions of the Act relating to rehabilitation, conservation and redevelopment under the general heading of "urban renewal". No change in the nature of the requirement was made. The same requirement was simply made applicable to a broader category of projects.

Since the basic nature of the limitations set forth in Section 1460(c) did not change between the 1954 and 1956 versions, but only the type of projects to which those limitations applied, it is submitted that the com-

mittee reports relating to Section 1460(c) which accompanied the 1949 and 1954 versions are fully applicable to the 1956 version insofar as the requirements as to existing use and projected re-use are concerned.

Section 1460(c) was further amended by Act of September 23, 1959, P. L. 86-372, Title IV, Section 413, 73 Stat. 675, 677, to read in part as follows:

> "Financial assistance shall not be extended under this subchapter with respect to any urban renewal area which is not predominantly residential in character and which, under the urban renewal plan therefor, is not to be redeveloped for predominantly residential uses: *Provided*, That, if the governing body of the local public agency determines that the redevelopment of such an area for predominantly nonresidential uses is necessary for the proper development of the community, the Administrator may extend financial assistance under this subchapter for such a project: . . ."

This language upon which the Goldmans rely, and which they have misconstrued continued the prior law as to areas which were predominantly residential before redevelopment, or which were to be redeveloped for residential uses. It did not deal at all with such areas. It simply said that if an area were not predominantly residential and was not to be redeveloped for predominantly residential use, federal financial assistance could only be granted if the governing body of the local public agency found that such non-residential use was necessary to the proper development of the community. This amendment effected a broadening of the federal administrator's authority to extend assistance to projects providing for the redevelopment of non-residential areas for non-residential uses by deleting the requirement that such an

area contain a substantial number of slum dwellings, and substituted the requirement of a finding of necessity. This is substantiated by Senate Report No. 924, September 8, 1959, 86th Cong., 1st Sess., U. S. Code Cong. and Adm. News (1959), at page 2864:

> "Section 413 — Amends section 110(c) of the Housing Act of 1949 [42 U.S.C.A. Section 1460(c)] to permit up to 20 percent of the future capital grant authorization to be used for areas which are not predominantly residential, and which are not to be redeveloped for predominantly residential uses, even if such areas do not include a substantial number of slum dwellings as presently required."

The latest amendment to Section 1460(c) was made in 1961, by Act of June 30, 1961, P.L. 87-60, Title III, Section 308, 75 Stat. 166, 168, 172, to increase the percentage of future capital grant authorizations to be used for areas not predominantly residential, and which are not to be redeveloped for predominantly residential uses, from 20% to 30%.

The Senate report which accompanied this amendment is particularly instructive in setting out that the federal act, in its present form, still requires that a project area either be predominantly residential before redevelopment, or predominantly residential after redevelopment, with exceptions for certain projects where non-residential areas are to be redeveloped for non-residential uses. Senate Report No. 281, U. S. Code Cong. and Adm. News, 87th Cong., 1st Sess. (1961), at page 1952, states:

> "Section 309 would permit 30 percent instead of 20 percent of urban renewal grant authority to be

used for the renewal of areas not filling the predominantly residential requirement of the law.

"Urban renewal project areas presently are required to be 'predominantly residential' in character either before or after renewal, except that 20 percent of available urban renewal grant funds may be devoted to projects without regard to this requirement. . . ."

It is quite clear from this legislative history that the Housing Act of 1949, as originally enacted, and as amended to date, has always authorized and still authorizes full federal financial assistance to redevelopment projects which either (1) are predominantly residential prior to redevelopment, or (2) will be predominantly residential after redevelopment.

As to project areas predominantly residential to begin with, such as the Project Area herein, the federal act has never placed any restriction on the type of uses to be made of the area after redevelopment. It is very apparent that the Goldmans' contentions as to Section 1460(c) are based on an entirely erroneous interpretation of the 1959 amendment thereto.

The Administrative Construction of Section 1460(c).

The HHFA, which is delegated the primary responsibility for administering the Housing Act of 1949, as amended (see *e.g.*, 20 U.S.C.A., Section 1441), has consistently interpreted Section 1460(c) as above set forth. A number of reported cases disclose that federal financial assistance has been extended to redevelopment projects which redeveloped residential areas for non-residential use. Among them are *Foeller v. Housing Authority of Portland*, 256 P. 2d 752 (Ore. 1952) [predomi-

nantly residential area. The court assumed a redevelopment plan calling for industrial use only]; *Gohld Realty Co. v. City of Hartford,* 104 A. 2d 365 (Conn. 1952) [residential area, with intermixed commercial and light industrial uses, planned for retail and wholesale business uses]; *Crommett v. City of Portland,* 107 A. 2d 841 (Maine 1954) [predominantly residential area, planned for commercial, industrial, "and other" uses]; *Housing Redevelopment Authority of Minneapolis v. Minneapolis Metropolitan Company,* 104 N. W. 2d 864 (Minn. 1960) [area consisting largely of rooming houses and establishments "serving the needs and demands of transients", to be redeveloped for commercial and light industrial uses].

While it is true that administrative interpretation or practice is not conclusive as to the construction of a statute, still it "has peculiar weight when it involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new." *Norwegian Nitrogen Products Co. v. United States,* 288 U. S. 294 (1933); *Fawcus Machinery Co. v. United States,* 282 U. S. 375 (1931).

The Project Area is a predominantly residential area. The Goldmans contend that under the provisions of Section 1460(c) applicable to the Final Plan such an area must be redeveloped for predominantly residential use, unless the City Council made an express finding that redevelopment of the area for non-residential uses was necessary to the proper development of the community. Since such a finding was not explicitly made, the Goldmans contend that the Final Plan did not and does not qualify for federal financial assistance.

The language of the section, the legislative history thereof, and the administrative interpretation of and practice under the section all clearly indicate that where an area is predominantly residential to begin with, as in the instant case, it may receive full federal financial assistance irrespective of the uses to be made of the area under the urban renewal plan therefor.

The Goldmans' contention appears to be based on the entirely erroneous assumption that federal assistance may be extended only to projects providing for residential development. It also appears to be based in part on a misinterpretation of the language of the 1959 amendment to Section 1460(c), above set forth. The finding as to the necessity of non-residential redevelopment, the absence of which the Goldmans contend is fatal herein, made a requirement by the 1959 amendment to Section 1460(c), is only required in the case of projects providing for the redevelopment of predominantly non-residential areas for predominantly non-residential uses. Since the Project Area herein was and is clearly predominantly residential, and assuming that the 1959 amendment is applicable to the Final Plan, such a finding would not have been required.

It is submitted that the Goldmans' contentions with respect to the eligibility of the Final Plan for federal financial assistance are nothing more than the product of the misreading of Section 1460(c) and are wholly without substance.

F. Assuming, Arguendo, That the Final Plan Does Not Qualify for Federal Financial Assistance, the Goldmans Have No Standing to Challenge the Action of the Federal Administrator in Extending Such Assistance Thereto. Additionally, Had the Goldmans Such Standing, They Have Chosen the Wrong Forum.

Sections VII and VIII of the Goldmans' brief, at pages 88 through 114, contain a lengthy exposition in which it is contended that the Goldmans, as taxpayers, may properly raise and litigate the questions of whether or not the Final Plan qualifies for federal financial assistance under federal law, including the question of whether or not the City Council made the finding which the Goldmans erroneously contend was required by federal law as a condition precedent to such aid.

By way of background, the federal administrator approved the Final Plan for a federal loan and capital grant [Agency Ex. 39.2, p. 6, line 24, to p. 7, line 1, Agency Ex. 47], and subsequently executed a contract with the Agency providing therefor [Clk. Tr. p. 560; Agency Ex. 46]. The Goldmans, in their First Amended Complaint herein, have sought to enjoin the expenditure by the Agency of any funds acquired from the United States Government under the Housing Act of 1949, as amended [Clk. Tr. p. 113].

A case directly in point against the Goldmans is *Kaskel v. Impellitteri*, 121 N. Y. S. 2d 848 (N. Y. Sup. Ct. 1953) [aff'd 115 N. E. 2d 659 (N.Y. 1853)]. In that case, plaintiff taxpayer sought to enjoin the expenditure of city and federal funds by the redeveloping authority, on the ground that the redevelopment plan

did not qualify for federal assistance under 42 U.S.C.A. Section 1460(c). The Court stated, at page 854:

> "Plaintiff contends, next, that the redevelopment plan violates the provisions of the National [sic] Housing Act of 1949 which, it is submitted, is intended for the protection of the taxpayers and residents of the city, in that it does not provide for redevelopment for predominantly residential uses and is therefore, illegal, and that the city should, in consequence, be enjoined from expending funds allocated to the city under it.
>
> "If the city is improperly spending or contemplates spending funds contributed toward the project by the National [sic] Housing and Home Finance Agency, it is a matter for the consideration and concern of the federal administrator and not for the plaintiff and, on this feature, the court is of the view that the plaintiff is without legal capacity to sue. *Hunter v. City of New York,* Sup. 121 N.Y.S. 2d 841. . . ."

Three recent federal decisions have also held that the plaintiffs therein had no standing to litigate questions under the Housing Act of 1949, as amended.

In *Gart v. Cole,* 263 F. 2d 244 (2d Cir. 1959) [*cert. den.* 359 U. S. 978], certain property owners in a redevelopment project area, as individuals and in representative capacity, sued the Federal Administrator of the H. H. F. A. to enjoin the execution of the redevelopment plan involved. Among their contentions was a claim that certain sponsorship agreements executed by the city violated specified provisions of the Housing Act of 1949, as amended.

The court held that plaintiffs had no standing to contest the validity of the agreements, stating at page 250:

"Appellants clearly have no standing to assert that the City's sponsorship agreements violate the Housing Act's alleged requirements of open bidding on all property sold as part of the Project. Assuming that such a requirement may be read into 42 U.S.C. Sections 1456(c) (7) and 1460(c) (4), these sections seen designed to protect not the interests of landowners or tenants in a redevelopment area, but those of the public at large. Appellants cannot challenge this expenditure of funds as representatives of so broad an interest. Commonwealth of Massachussetts v. Mellon, 262 U.S. 447, 43 S.Ct. 597, 67 L.Ed. 1078. See also Allied-City Wide, Inc. v. Cole, 97 U.S. App.D.C. 277, 230 F. 2d 827."

In *Pittsburgh Hotels Ass'n, Inc. v. Urban Redevelopment Auth.*, 202 F. Supp. 486 (W.D. Pa. 1962), aff'd 309 F. 2d 186 (3rd Cir. 1962), plaintiffs sought to enjoin the execution of so much of a redevelopment project as provided for the construction of a hotel. The court held that the plaintiffs had no standing to maintain their attack, stating at pages 492-493:

"Moreover, the Housing Acts were not passed for the benefit of hotels, and if the 1959 Amendment is correctly construed to be prospective, plaintiffs have no standing to maintain this legal attack upon the 1955 Plan and its provision permitting the construction of a hotel. If plaintiffs and their employees will be financially injured, as they allege, by the prospective lawful competition, such injuries are damnum absque injuria. Ala-

bama Power Co. v. Ickes, 302 U.S. 464, 58 S.Ct. 300, 82 L.Ed. 374 (1938); Taft Hotel Corporation v. Housing & Home Finance, 162 F.Supp. 538, 539-540 (D.Conn. 1958), aff'd 262 F.2d 307, 308 (2d Cir. 1958); Gart v. Cole, 166 F.Supp. 129 (S.D.N.Y. 1958), aff'd 263 F.2d 244 (2d Cir. 1959)."

Accord: *Harrison-Halstead Com. Group Inc. v. H.H.F.A.*, 310 F. 2d 99 (7th Cir. 1962).

These are square holdings by the courts that a taxpayer has no capacity to sue to enjoin the expenditure of funds made available to a redevelopment project by the federal authorities under the Housing Act of 1949, on the ground that the project is not qualified to receive such federal aid. The obvious rationale of the holdings are twofold: (1) the Federal act does not create any cause of action in taxpayers or anyone else in this regard; and (2) no taxpayer has a sufficient interest in the funds in the federal treasury to create a basis for a taxpayer's action to enjoin the expenditure of such funds. *Frothingham v. Mellon*, 262 U. S. 447 (1923); *Alabama Power Co. v. Ickes*, 302 U. S. 464 (1938).

Furthermore, if such a cause of action did exist in favor of the Goldmans, it appears that they have chosen the wrong forum in which to prosecute it. In *Hunter v. City of New York*, 121 N. Y. S. 2d 841 (N. Y. Sup. Ct., 1953), the plaintiffs sought to have certain contracts declared invalid, including a contract entered into between the redevelopment authority and the federal government under the Housing Act of 1949, on the ground that the redevelopment plan failed to comply with the federal law as to the relocation of tenants displaced from the project area. The New York court

dismissed the complaint. After finding that the plaintiffs lacked legal capacity to sue, the court stated at pages 847-848:

> "Assuming, arguendo, plaintiffs have legal capacity to sue under the Act and may maintain the action at bar, nevertheless the complaint must be dismissed for the reason that neither this court not any other state court is the proper form for such suit; state courts have no jurisdiction over the acts of federal officials acting as such in the administration of the federal laws or as agencies of the federal government. *Perkins v. Lukens Steel Co., supra; Tennessee Electric Power Co. v. Tennessee Valley Authority*, 306 U.S. 118, 59 S.Ct. 366, 38 L.Ed. 543; *Mount Hope Development Corp. v. James*, 258 N.Y. 510, 180 N.E. 252. . . ."

The *Hunter* case indicates that no state court has jurisdiction to review the findings of the federal administrator in determining that a redevelopment plan qualifies for federal assistance. Such a review would be necessarily involved in an action such as the Goldmans to enjoin the Agency from expending, in furtherance of the Final Plan, funds made available by the federal government, on the ground that the Final Plan is not qualified under federal law to receive such federal assistance.

To overcome the foregoing authority, the Goldmans appear to rely primarily upon the case of *Shipley v. Smith*, 107 P. 2d 1050 (N. M. 1940) set out at pages 25 to 27 of their brief. In that case a county resident brought a taxpayer's action to enjoin the expenditure of funds under an illegal contract. The contract involved the purchase of certain machinery at a cost in excess of $500.00. State law required that any county

making such a purchase advertise for bids and buy from the lowest responsible bidder. This procedure had not been followed by the county, hence the suit.

The court held that the plaintiff had standing to maintain the suit, even though the money to be expended came from the federal government, rather than from local taxation. This case merely stands for the proposition that a local taxpayer may compel a municipality to follow local statutory requirements involving the expenditure of money, regardless of the source of the funds to be expended. It does not stand for the proposition that a taxpayer has standing to litigate the question of whether or not a federal administrator was right or wrong in determining that a redevelopment plan qualifies under federal law for a federal grant, by seeking to enjoin the expenditure of the funds by the Agency on the ground that they were improperly made available.

In order for the *Shipley* case to be at all applicable, it would have had to be a suit to enjoin the expenditure on the ground that the federal funds had been improperly granted to the county. This obviously was not the situation before the court in *Shipley,* but it is precisely the question which was before the court in both the *Kaskel* and *Hunter* cases, and at least collaterally involved in the *Gart, Pittsburgh* and *Harrison-Halstead* cases, in all of which the court held the taxpayer to be without standing to maintain the action.

It is submitted that the Goldmans not only lack capacity to raise the contentions in question, and therefore failed to state a cause of action existing in their favor, but if they had such a cause of action, it is highly doubtful that any state court would have jurisdiction over the subject matter thereof.

APPENDIX "C".

EXCERPT FROM THE AGENCY'S BRIEF BELOW, RELATING TO ALLEGED DISCRIMINATION BETWEEN OWNER-PARTICIPANTS AND RE-DEVELOPERS.

5. The Goldmans' Contention Is Without Merit in That the Final Plan Provisions Relating to Owner Participation Do Not Illegally Discriminate Between Owner-Participants and Redevelopers.

As noted above, the Goldmans contend that the owner participation provisions of the Final Plan unconstitutionally discriminate between owner-participants and redevelopers in that owner-participants are required to assume financial responsibility for a pro rata share of the cost of site improvements benefiting their property while redevelopers are allegedly exempted from this requirement. This contention is completely untenable.

Counsel for the Goldmans extensively questioned Mr. Bill, the Executive Director of the Agency on this aspect of the Final Plan [Agency Ex. 39.6, p. 80, line 5, to p. 84, line 18].

The following exchange is particularly instructive [Agency Ex. 39.6, p. 82, line 17, to p. 83, line 4]:

> "Mr. Silver: Has your Agency as yet determined what the total cost of the site improvement will amount to in the Project?
>
> "Mr. Bill: In the terms of this discussion, and the use of words previously qualified as a definition of site improvement, it will be in the neighborhood of $7½ million—
>
> "Mr. Silver: What percentage will the owner be required to pay as his share of the total cost of

the site improvement, if he is allowed to retain title to his land?

"Mr. Bill: The methods that will be utilized there can't give it in a percentage as such. The site improvement cost will be prorated on the basis of net benefits to his property as reflected in the re-use land value. The proportional net figure based on benefits."

Mr. Bill further testified [Agency, Ex. 39.6, p. 84, lines 7-13] that this pro rata charge had to be made on an equitable basis, and could not be done on a square foot basis.

Mr. Sesnon was also extensively examined by counsel for the Goldmans at the public hearing before the City Council. The following bears particularly on the point here considered [Agency Ex. 39.8, p. 64, line 22, to p. 66, line 16]:

"Mr. Silver: Is it not provided in the Plan that the owner who desires to participate must agree to assume their pro rata share of the cost of these site improvements?

"Mr. Sesnon: Under certain circumstances and conditions as related to their benefits to their own property in that form.

"Mr. Silver: And in this assumption of liability for the necessary site improvements, does it also include the demolition of their structures?

"Mr. Sesnon: Yes, they demolish their own structures, that is correct.

"Mr. Silver: When an owner residing in the area desires to participate in another building, then he would likewise be required to assume his pro-rata share of the demolition of the structure?

"Mr. Sesnon: No, no, if this owner-participant requires additional property from the Agency—

"Mr. Silver: No, if he participates with another owner in a large project, that he would be required to assume his pro rata share of the cost of demolition, if that structure is demolished?

"Mr. Sesnon: Not he alone. If a group came in—

"Mr. Silver: The group alone?

"Mr. Sesnon: The group would have to demolish their own building and their own property.

"Mr. Silver: Is it not true also that if an owner desires additional land from the Agency, in order to qualify for the type of structure the Agency has imposed, that he would likewise be required to agree to assume liability for the cost of the necessary demolition that had taken place in the other land?

"Mr. Sesnon: No.

"Mr. Silver: Would he not be required to assume his liability as to the cost of removal of the site improvements that had taken place from this other land?

"Mr. Sesnon: No.

"Mr. Silver: Would he not be required to pay his pro rata share for the cost of the new site improvements on this particular addition of land?

"Mr. Sesnon: On the newly acquired land, let us understand this carefully as I am sure that this is significant to the Members of the Council, my answer to this question is primarily directed at land that the said owner-participant group, and an owner-participant would be acquiring from the Redevelopment Agency, and in answer to would they

be required to pay a pro rata share of that, the answer is no."

Further [Agency Ex. 39.8, p. 82, lines 13-24]:

"Mr. Silver: Isn't it a fact, Mr. Sesnon, that there is no intention in this Plan to compel the redevelopers to assume any liability as to the cost of site improvements that will be assessed against the land on Bunker Hill?

"Mr. Corman: Same objection.

"Mr. Sesnon: This is already in the record, the site improvement costs will be pro rated, and the owner-participant pays for the net benefits to his property as reflected in the re-use land values. To further emphasize this, it will put the owner-participant on an equal basis with the redevelopers who will pay a rate on the re-use sale value which includes those benefits."

At the trial below, Mr. Bill was questioned in this area by counsel for Trautwein, as follows [R. Tr. p. 780, line 26, to p. 781, line 9]:

"Q. By Mr. Norris: Do you know what portion or what charges would have been made for site development had I been able to participate on the property I owned? A. At that time I did not, nor do I now.

Do you want me to elaborate a bit on that, or just a yes or no?

In other words, we have, I believe, nine owner-participation agreements executed, and there is a dollar amount in each one of those, and each one took study in order to determine it."

Owner-participants acquiring additional land, and redevelopers are in exactly the same position in acquir-

ing land from the Agency. *Neither category is exempted from paying for the site improvements.* In each case, the Agency is required to sell the land at its fair market value for the uses to which it is to be put under the Final Plan [Agency Ex. 46.5, p. 12]. Both the owner-participant buying additional land and the redevelopers, in paying fair market value for the land, in its improved state, obviously will be paying a price which reflects the value of the site improvements insofar as they benefit the particular parcels being purchased. This is comparable to the pro rata share of the cost of the site improvements which must be assumed by the owner-participants.

The Goldmans' contention regarding the cost of site improvements is clearly insupportable. It misunderstands the nature of real property transactions. The fact that owner-participants purchasing additional land and redevelopers do not directly pay a pro rata share of the cost of site improvements benefiting the land they purchase is not because they are being relieved of a responsibility. It is because pro rata costs are not appropriate in selling property, while they are appropriate when dealing with retained property, which will not be publicly owned when the site improvements are made. Owner-participants are required to assume financial responsibility for a pro rata share of the cost of site improvements which benefit their existing land. Redevelopers, and owner-participants purchasing additional land, are required to pay fair market value for the property in its improved state, which will obviously reflect the value of the site improvements to the extent they benefit the property and enhance its market value.

It is entirely reasonable to require owner-participants to pay that portion of the cost of site improvements installed by the Agency benefiting the owner-participants' land, which is reflected in the re-use value of the land.

It is also entirely reasonable to require that redevelopers and owner-participants purchasing land from the Agency pay fair market value for uses in accordance with the Final Plan for such land in its improved state. Certainly, the Agency would be severely censured if it sold the land for less. On the other hand, no one would buy it for any greater price. How a sale at fair market value could amount to an unconstitutional exemption in favor of the redeveloper is not clear.

The answer to the Goldmans' contention was well stated by the court in *Randolph v. Wilmington Housing Authority,* 139 Atl. 2d 476 (Del., 1958), wherein the plaintiff complained of a statutory requirement that the redevelopment authority sell the land in the project area for its fair value. The court rejected the plaintiff's contention, stating at page 486:

> ". . . The statute requires that the land shall be sold or leased 'at its fair value.' What more could be said?"